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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/646,825	08/25/2003	Yoshinao Nagashima	240950US0DIV	1353
22850 7590 06/19/2008 OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314				
EXAMINER GEMBEHL, SHIRLEY V				
ART UNIT 1618		PAPER NUMBER		
NOTIFICATION DATE 06/19/2008		DELIVERY MODE ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary

Application No.

10/646,825

Applicant(s)

NAGASHIMA ET AL.

Examiner

SHIRLEY V. GEMBEH

Art Unit

1618

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 April 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 20-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 20-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/ICE)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Finality Withdrawn

The response filed 4/14/08 presents remarks and arguments. Applicants' request for reconsideration of the rejected claims in the last office action dated 1/29/08 has been considered.

Applicant's request for reconsideration of the finality of the rejection of the last Office action is persuasive and, therefore, the finality of that action is withdrawn.

The response filed **4/14/08** presents remarks and arguments to the office action mailed **1/29/08**. Applicant's request for reconsideration of the rejection of claims in the last office action has been considered.

Applicant's arguments have been fully considered but they are not deemed to be persuasive. Rejections and/or objections not reiterated from previous office actions are hereby withdrawn. The following rejections and/or objections are either reiterated or newly applied. They constitute the complete set presently being applied to the instant application.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 103

Claim 20 rejected under 35 U.S.C. 103(a) as being unpatentable over Feist et al., US 4,659,493 is withdrawn.

Applicant argues that the reference does not teach eugenol having no odor above detectable threshold.

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Applicant's arguments with respect to claim 20 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 20-22 and 24 are rejected under 35 U.S.C. 102(b) as being anticipated by Surburg et al., US 6420,334.

Surburg et al. teach tetracyclic acetal in perfumes, wherein the hydroxyl ketone is odorless in pure form in a heat generating device. It is interpreted that purity is of 100% absent factual evidence. See col.3, lines 1 and col. 6, lines 2. It is anticipated that once the cedrol is pure it will contain no odor. As to the "... having no odor above a detectable threshold" is also anticipated because it varies from person to person and also different animals detect odor at very low concentrations. The reference teaches the use in lamp oils. Lamp oils are used with heat either through electricity or by burning a wick. See col. 10, lines 7-8, thus cedrol will be released through heat generating source.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and

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the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148

USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over Surburg et al., US 6420,334 in view of Zaunbrecker et al., US 5,955,034.

Surburg et al. teach tetracyclic acetal in perfumes, wherein the hydroxyl ketone is odorless in pure form. It is interpreted that purity is of 100% absent factual evidence. See col.3, lines 1 and col. 6, lines 2. The reference fails to teach or explicitly express the cedrol concentration of the sesquiterpene alcohol as 0.01-100ppb

Zaunbrecher et al. teach air freshener candles with cedrol as the component, wherein the heat is generated under candle burning conditions. See abstract and col. 3, lines 36-37. The reference teaches the freshener agent is in a concentration of 0.05% see col. 2, lines 7-8.

Odor is perceived based on intensity, degree of offensiveness and odor measurement is based on dilution to threshold methods, diluting an odor sample with odorless air at a number of levels and series known to one of ordinary skill in the art.

Also as taught by Safety Shorts Odor threshold may be defined as the lowest concentration of odorant (an odor producing chemical) that can be detected in air by the average person.

Odor threshold is far from precise. Among all sensory perceptions, the ability to Detect odors and measure them is the most variable and elusive. Different studies done on the same chemical yielded results that varied by as much as four orders of magnitude. The main reasons for the variability are study design, differences in sources, and because of the huge differences in human olfactory responses. Some people may detect a certain odor at a few parts per billion while others can't smell it at concentrations thousands of times higher. See underlining.

Based on the above teachings one of ordinary skill in the art would have combined the teachings and used cedrol in its pure form, in a concentration such that when vaporized has a concentration of 0.01-100 ppb which is (0.00001 mg/L). The Safety shorts teaches the concentration is based on dilution per air, therefore based on

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the teaching, the airspace/volume one would have the candle emits its vapor in the air in an atmosphere that the concentration would yield 0.01-100 ppb.

It would have been obvious to one of ordinary skill in the art to combine the prior art, substitute the cedrol in its pure form that has no odor in a candle as the vaporization system.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SHIRLEY V. GEMBEH whose telephone number is (571)272-8504. The examiner can normally be reached on 8:30 -5:00, Monday- Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, MICHAEL HARTLEY can be reached on 571-272-0616. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Michael G. Hartley/

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Supervisory Patent Examiner, Art Unit 1618

SVG

6/9/08